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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	CC Docket No. 94-54

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REPLY COMMENTS OF COX ENTERPRISES, INC.

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SUMMARY

Everyone claims to be in favor of competition but not everyone agrees what it is and what the Commission can do in the case of LEC-to-CMRS interconnection to advance the day when LECs and CMRS providers are in head-to-head competition for customers. Under the LEC version of competition, CMRS competitors can enter LEC markets only if they ensure that the LECs maintain their current levels of profit. The economic truism that competition moves price towards cost is obviously foreign to the LECs. While they claim to support competition, the LECs seek to maintain interconnection rates for CMRS providers that are many times in excess of their actual, incremental costs and fail to compensate CMRS providers for the call termination function they provide to the LEC network in contravention of established FCC policy and the Telecommunications Act of 1996 ("TCA"). This position, of course, is obstinately and directly inconsistent with the LEC stance that the TCA is the sole source of the FCC's authority over CMRS interconnection, because the TCA contains an explicit pricing standard for mutual call termination and transport at incremental cost, with bill and keep as a reasonable proxy for reciprocal compensation.

Because the LECs have chosen not to submit data to support their phantom and anticompetitive interconnection cost claims, the Commission has no reason to impose any other interim compensation method but bill and keep. On the other hand, because there is an ample record to support the proposition that incremental cost is de minimis, interim bill and keep as a form of reciprocal compensation is administratively efficient, simple to implement and promotes competition. Perpetuation of non-cost-based or other arbitrary interconnection rates, on the other hand, would harm CMRS' viability as a local loop competitor. Because

of its unique opportunity to jump-start competition, thereby expanding access immediately to affordable wireless telecommunications services, Cox urges the Commission to adopt interim bill and keep for LEC-to-CMRS interconnection now. In so doing, the FCC will keep pace with the progressive states that are opening the local loop to wireless competition. Fully two-thirds of the states adopting wireline-to-wireline interconnection policies have already implemented bill and keep on an interim basis.

LEC arguments that bill and keep will force local telephone rates to increase or will threaten universal service are grossly inaccurate and must be dismissed as wild hyperboles. LECs have extracted monopoly rents from CMRS interconnectors for years, and the Commission cannot accept unsupported LEC claims that the adoption of bill and keep will in any way harm consumers or expose LECs to enormous intrastate revenue shortfalls. The Commission has the authority and the obligation to promote CMRS competition with incumbent LECs. The comments plainly show that bill and keep will promote competition. Indeed, the reams of paper the LECs have thrown into this docket prove that the adoption of bill and keep may do exactly what the LECs apparently fear most: open their monopoly markets to competition.

No party to this proceeding has produced any hard evidence that the cost of interconnection is more than the de minimis 0.20 cents submitted by Dr. Brock over a year ago. Further, data submitted in this docket shows that, at least for the first personal communications service provider implementing commercial service, traffic flows between LECs and CMRS providers are roughly balanced. Both the public policy in favor of competition and the facts presented in this docket support the adoption of bill and keep. The

Commission must ignore the LEC half-truths and political pressure and adopt interim bill and keep promptly.

Many LECs claim the Commission does not have the authority to adopt bill and keep. These claims are false. The 1993 Budget Act radically expanded the Commission's jurisdiction over CMRS interconnection and interconnection rates, explicitly removing state authority over these matters. Congress's amendments to Section 2(b) and Section 332 plainly demonstrate Congressional intent for CMRS to be regulated on the national, not the state level.

Section 332(c)(1)(B) grants the Commission authority to regulate all aspects of CMRS interconnection, including LEC-to-CMRS mutual compensation arrangements, regardless of the nature of the traffic involved. Specifically, Section 332(c)(1)(B) expands the Commission's authority under Section 201 to include authority to act in response to any CMRS provider's request for interconnection by prescribing the rates, terms and conditions of interconnection.

The Commission's authority to regulate LEC-to-CMRS interconnections rates and policies is reenforced by Section 332(c)(3) of the 1993 Budget Act, which preempts state authority over "rate and entry" regulation of CMRS. Arguments that Section 332(c)(3) applies only to end user rates and not to interconnection rates charged by LECs for CMRS interconnection are unsupported by the terms of the 1993 Budget Act and, if adopted, would create a regulatory structure for CMRS that cannot practically be maintained -- much less one capable of achieving Congress' and the Commission's competitive goals for CMRS.

The jurisdictional basis for Commission consideration of LEC-to-CMRS interconnection is also undisturbed by the TCA's interconnection provisions. The TCA expressly preserves the regulatory structure for CMRS established by Congress three years ago. Moreover, even assuming that the TCA alone provides the rubric for the delegation of responsibilities between the FCC and the states, it is plain that the preemptive power of the FCC is enhanced by the TCA -- confirming the FCC's authority to dictate a bill and keep mutual compensation model for LEC-to-CMRS interconnection. And even an application of the Louisiana PSC's preemption standards leads to the unassailable conclusion that the FCC has authority to mandate bill and keep as an interim solution to the significant and present ills of CMRS interconnection.

Arguments that adoption of the Notice's proposals will favor wireless technologies are without merit. In establishing a federal regulatory framework for CMRS, Congress did not negate the possibility that CMRS providers could be subject to different common carrier obligations than wireline carriers. Claims that Congress requires identical treatment between wireline and wireless service providers also ignore the special treatment that Congress, not the FCC, bestowed on CMRS in 1993. Moreover, they overlook the fact that CMRS providers seeking intrastate interconnection consistently have been discriminated against under state law. To say that adoption of the bill and keep proposal will "prefer" wireless providers in their interconnection negotiations with local exchanges is simply perverse.

Implementation of interim bill and keep would be the most pro-competitive policy to come out of the Commission since the late 1960s and the early 1970s when the Commission made its initial moves to introduce competition in the long distance industry. Incumbent monopoly providers then, like the incumbent monopoly providers now, did everything in their power to prevent providers of competitive services from entering their markets on a reasonable economic basis. The uproar over bill and keep shows just how important its adoption is to the promotion of competition. The Commission should, on an interim basis, adopt a bill and keep compensation method for LEC-to-CMRS interconnection. Adoption of interim bill and keep will provide the Commission with data on traffic flows and will give all parties time to determine the true cost of interconnection on a long-run incremental cost basis. When the Commission reviews its general interconnection policies as required under the TCA, it will have data and information to consider rather than only a drumbeat of anticompetitive rhetoric from incumbent LECs.

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REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox") hereby submits its reply comments on the Commission's Notice of Proposed Rulemaking in the above-captioned rulemaking proceeding.[1/]

I. GENERAL COMMENTS.

Interconnection to the local exchange carrier ("LEC") network has been one of the intractable but critical issues to face the wireless industry since its inception. Indeed, resolution of the issues raised in this proceeding will either: (1) establish a pro-competitive framework for the future development of commercial mobile radio services ("CMRS"); or (2) relegate the CMRS industry to niche markets, preventing near-term head-to-head competition in the local telecommunications marketplace. Cox urges the FCC to exercise its

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1/ See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185 (released January 11, 1996 ("Notice"). These reply comments generally follow the Commission's preferred format contained in the Notice.

jurisdiction over LEC-to-CMRS interconnection to mandate immediately an interim bill and keep mutual compensation scheme for interconnection as the only pro-competitive, viable solution to continuing LEC abuses in matters of CMRS interconnection.

The record in this proceeding illustrates that current CMRS interconnection rates imposed by the LECs exceed their long run incremental costs many, many times over. Moreover, the LEC response to the Commission's efforts in this proceeding to shift current incentives to promote telecommunications competition verges on hysteria. While it is obvious the LECs have grown accustomed to charging monopoly rents for interconnection of their networks with CMRS providers, they have no entitlement to or reasonable expectation of continuing to collect these excessive revenues. Indeed, their vehemence for preservation of monopoly rents for interconnection, even in light of legislative pronouncements that present polices are simply unacceptable, is nothing short of obstinate.

The FCC has a unique opportunity to shift the balance in favor of competition. It should not hesitate or delay this proceeding while developing long term structural reform of LEC interconnection pricing. The sky will not fall when the FCC requires interim bill and keep, nor will interexchange carriers rush to "arbitrage" the CMRS interconnection, contrary to LEC assertions. Moreover, adopting bill and keep on an interim basis will permit real progress to be made toward fully-competitive telecommunications markets. As a CMRS competitor, Cox urges the FCC to adopt the proposals contained in the Notice, as modified by Cox's suggestions, without delay to ensure that Congress' mandates in both the 1993

Budget Act[2/] and the Telecommunications Act of 1996[3/] are effectively implemented for the benefit of the American consumer.

2/ Omnibus Budget Reconciliation Act of 1993, Pub.L.No. 103, 107 Stat. 312, 392 ("1993 Budget Act").

3/ Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (1996) ("TCA").

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS.

A. Compensation Arrangements.

1. Existing Interconnection Arrangements Should be Replaced by a Uniform Interim Bill And Keep Policy.

There is virtual unanimity in the comments in this proceeding regarding the substance of existing interconnection agreements between incumbent LECs and CMRS providers. With rare exception, these agreements provide that the CMRS operator must compensate the LEC on a per-minute basis for calls that terminate on the LEC network, while the CMRS provider receives no compensation whatsoever from the LEC when its calls terminate on the CMRS network.[4/]

There also is little disagreement that the rates paid by CMRS providers for the "privilege" of terminating traffic on the LEC network are far in excess of the incremental cost incurred by the LEC. As Cox demonstrated over a year ago, the average incremental cost for terminating a call on a LEC network is approximately $.002 per minute.[5/] In this round of comments, CMRS providers have confirmed payments as high as $.06 per minute, an amount 30 times greater than the incremental cost to the LEC. Higher rates were

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4/ APC Comments at 4 (the agreement between Bell Atlantic and APC "provides for Bell Atlantic to receive revenue from APC on all calls - interstate and intrastate - and for APC to receive revenue from Bell Atlantic on none"); see also AirTouch Comments at 5; PCIA Comments at 4.

5/ Cox ex parte, "Incremental Cost of Local Usage" by Dr. Gerald W. Brock, filed in CC Docket No. 94-54 on March 21, 1995.

reported by some cellular operators and placed in the record by Cox.[6/] Even those LECs that take issue with Dr. Brock's calculation of the incremental cost of terminating traffic by adding back impermissible common costs and overheads concede that their average "costs" -- with overhead added back -- are no more than 1.3 cents per minute.[7/] The premium rates LECs indisputably receive demonstrate that they maintain the incentive and ability to maintain rates at a monopoly rent level to restrict competitive interconnection to LEC essential local facilities on economically reasonable terms.

A number of LECs claim that there is no need for Commission intervention because the results of LEC/CMRS interconnection negotiations are reasonable and cellular providers are satisfied with their terms and pricing provisions because no complaints have been filed either at the Commission or at state PUCs.[8/] These claims are factually incorrect[9/] and fail to

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6/ Cox Comments at 13-14; CCPR Comments at 5; see also Vanguard Comments at 8-9 (termination charge of $.05 per minute paid to NYNEX in Maine to recover asserted incremental costs of $.005 per minute).

7/ USTA Comments, Report of Strategic Policy Research at 9 ("SPR Report").

8/ Bell Atlantic Comments at 9-11; NYNEX Comments at 13-15; PacBell Comments at 26-29.

9/ There have been complaints filed against LECs alleging failure to negotiate in good faith for interconnection. For example, in March of 1989, CyberTel Cellular Telephone Company filed a formal interconnection complaint against Southwestern Bell alleging, among other things, that Southwestern Bell had denied reasonable physical interconnection arrangements, imposed unreasonable and discriminatory rates for interconnection and failed to negotiate in good faith. CyberTel Cellular Telephone Company v. Southwestern Bell Telephone Company, File No. E-89-136 (complaint filed March 13, 1989). Not surprisingly, the complaint subsequently was withdrawn in 1991 when CyberTel was acquired by Ameritech. Another complaint prosecuted by the FCC to completion was

(continued...)

support the proposition that existing interconnection agreements are reasonable. Moreover, the fact that few complaints have been filed does not lead to the conclusion that existing agreements are reasonable, let alone that they promote competition. As an initial matter, a cellular provider dependent on a LEC with regard to the quality of service provided to cellular customers would be reluctant to risk its relationship with the LEC, however imperfect, by filing a complaint. Moreover, if a cellular provider is affiliated with a LEC, which often is the case, the possibility that it would be permitted to make arguments against a LEC that could be turned against its parent company is remote.

An additional explanation for the low level of complaints filed against LECs by cellular providers is the fact that competition for local exchange services was not permitted in the vast majority of states until very recently and states thus had no reason to adopt interconnection policies that promoted cellular as a possible competitor to the LEC monopoly. To the contrary, cellular was viewed primarily as a high end, discretionary service that could afford to be overcharged for interconnection in order to preserve

9/ (...continued)
Indianapolis Telephone Company. See Indianapolis Telephone Company, Memorandum Opinion and Order, 2 FCC Rcd 2893 (1987).

affordable local end user rates.[10/] For this reason, there would have been no point (and potential harm) in seeking relief from unreasonable interconnection rates at the state level.[11/]

Accordingly, given the overwhelming LEC ownership of many cellular providers and the futility of filing a complaint at the state level, the only surprise is that any complaints against LECs with regard to cellular interconnection have been filed at all. In any event, the presence or absence of complaints is irrelevant to the fundamental issue in this proceeding: the question is whether LECs are overcharging CMRS providers for interconnection and, if so, what are the public interest consequences of those overcharges. The comments in this proceeding plainly demonstrate that the current monopoly imposed interconnection paradigm is one that relegates CMRS providers to niche services and is inconsistent with the pro-competitive policies the Commission must adopt to encourage competition in the local telecommunications market.

2. Only New and Improved Compensation Arrangements Such as Interim Bill and Keep Advance Competition and Help Competitors Gain a Foothold in Monopoly Markets.

Given the obviously one-sided nature of existing compensation arrangements between LECs and CMRS providers, the Commission's tentative conclusion that further measures are

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10/ See Implementation of the Omnibus Budget Reconciliation Act of 1993, Declaratory Order, Interim Rules and Proposed Rulemaking, Docket No. L-00950104 (Pa.PUC June 8, 1995) at 6 (finding that legislature deregulated cellular in 1984 because it "saw no need for the regulation of a luxury service like car phone service").

11/ For example, U S West states that the only complaint filed against it resulted in the Wyoming Public Service Commission imposing intrastate access charges on the cellular complainant. U S West Comments at 21 n.39.

necessary to promote competition is accurate.[12] Not surprisingly, the LECs and their affiliates uniformly oppose such reform and present no viable alternatives that the Commission might adopt in the short term. Rather, the LEC comments demonstrate their willingness to say anything to preserve the status quo.

Nothing in the LEC comments, however, provides a sound legal or public policy basis for inaction on the part of the Commission. To the contrary, the comments highlight both the LECs' pervasive market power and hubris in claiming that the excessively inflated profits they have made in the past providing interconnection to CMRS providers must continue and grow. These LEC claims are contrary to the pricing standards contained in the TCA, the statute which the LECs argue is controlling. If such claims are allowed to stand, CMRS would be forever relegated to a second-class, niche competitor in the local telecommunications market. Accordingly, the FCC must reject the LECs' arguments for some sort of undocumented interconnection "revenue entitlement" and prescribe an interim bill and keep mutual compensation arrangement that far more accurately reflects the miniscule costs of exchanging traffic between CMRS and LEC networks.

a. The Comments Demonstrate that an Interim Bill and Keep Compensation Arrangement for LEC/CMRS Interconnection is Necessary to Promote Competition.

It is beyond dispute that existing compensation arrangements between LECs and CMRS operators do not provide for "mutual" compensation in any sense of the word.

12/ Notice at ¶ 60.

Rather, because of their obvious market power, LECs are able to dictate the terms of interconnection on a "take it or leave it" basis. As one CMRS provider somewhat graphically but aptly observed, when the CMRS provider arrives at the negotiating table it is viewed by the LEC as a "parasite armed with a loosely worded federal interconnection requirement."[13/]

The LECs argue that there is no urgent need for reform because the cellular market continues to grow despite the LECs overcharging for interconnection.[14/] This assertion ignores two critical facts. First, cellular's success is in spite of, not as a result of, unreasonable interconnection agreements. Consumer demand for mobile services and the duopoly nature of the cellular market have been the driving factors behind the success of cellular providers.[15/] There is no telling how much higher cellular usage would be if reasonable mutual compensation arrangements had been in place for the past decade.[16/]

Second, for a variety of reasons, including the one-sided interconnection arrangements imposed by the LECs, cellular has succeeded only as a niche service that complements and does not displace basic landline local exchange service. Cellular providers have not sought to

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13/ Centennial Comments at 17.

14/ U S West Comments at 3-5; Bell Atlantic Comments at 9-11; BellSouth Comments at 22.

15/ Sprint and APC Comments at 12.

16/ Quite obviously the actual cost of interconnection is far less of an issue to a LEC-affiliated CMRS provider than to a non-affiliate, because for the LEC, it is a transparent pocket-to-pocket transfer as opposed to a real cost of doing business.

compete with landline LECs for customers and have not remotely threatened the LECs in their monopoly market, as the high capacity, digital, full-featured offerings of PCS providers like Cox will endeavor to do. Thus, while unilaterally imposed, unreasonable interconnection agreements have not deprived cellular providers of all marketplace success, there is nothing in the comments that supports the notion that existing compensation arrangements will, if unaltered, promote broad-based competition in the local telecommunications market.

Indeed, the current excessive, usage-based, unilateral charges assessed by the LECs for interconnection constrain the ability of PCS providers and other CMRS operators to compete and break out of niche markets. As the LECs are well aware, a carrier paying per-minute interconnection charges far in excess of incremental cost cannot compete with the flat-rated local exchange service offered by most LECs.[17] As Cox demonstrated in its comments, under this highly inflated per minute rate arrangement, a competing CMRS carrier's interconnection costs easily could exceed the LEC's retail rate for local exchange

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17/ Generalized LEC assertions that local rates are set below cost are unproven and cannot form the basis of a Commission conclusion that wireless competition for residential customers is economically unfeasible. Indeed, this argument is contradicted by the fact that a number of state regulatory commissions have determined that current local exchange rates are more than sufficient to recover the costs of providing service. See, e.g., Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Interexchange Telephone Service, Order No. 72348, The Public Service Commission of Maryland, Case No. 8584 (Phase II) (released December 28, 1995) ("Maryland Order") at 24 ("Bell Atlantic's own information also shows that, on a total service basis, BA-MD more than covers its direct incremental costs of business and residential service in every county in the State").

service. Maintaining the status quo ensures that no CMRS carrier can move its service offerings in the direction of the mass market, let alone attempt to create local loop competition.[18/]

If the Commission hopes to promote local telecommunications competition, it must address this inefficient and uneconomic competitive arrangement by prescribing an interim bill and keep compensation arrangement for LEC-CMRS interconnection. Bill and keep on a temporary basis will enable CMRS providers to establish more robust service offerings because it will prevent the incumbent LEC from imposing, through its enormous market power, unreasonable interconnection costs on its competitors. Contrary to LEC assertions that it will be used as a long term entitlement, interim bill and keep would merely create the appropriate incentives for LECs to rapidly provide accurate forward-looking incremental cost data that can form the basis for negotiating long-term arrangements if the exchange of traffic proves to be far out of balance.[19/]

Moreover, bill and keep is the simplest form of mutual compensation because there is no economic or practical need to determine the cost of interconnection on a carrier-by-carrier

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18/ Cox Comments at 14-15. See also Statement of Gerald W. Brock, March 25, 1996 (attached) at 15 ("Brock Reply").

19/ It is ironic that the LECs that express great concern about CMRS entrenchment in an entitlement have absolutely no qualms arguing their continued entitlement to collecting monopoly rents from competitors for essential interconnection functions.

basis.[20] It is an economically sound method of interconnection where either the incremental cost of terminating traffic is sufficiently low (when compared to the transaction costs of measuring the traffic), so that there is a miniscule difference between a cost-based and a zero rate, or the traffic is approximately balanced between the interconnecting co-carriers. As over two-thirds of the state commissions have found as they considered alternatives for competitive landline interconnection, bill and keep is a very practical means of moving immediately to a more open, competitive market. This is true because competitors can become interconnected with incumbent LEC networks without becoming embroiled in contentious, time-consuming and expensive cost studies.[21]

Consequently, bill and keep will ensure that PCS providers are able to enter the market quickly and are not forced to delay their service offerings while they "negotiate" with an incumbent LEC who, under the current framework, has every incentive to be unreasonable, uncooperative and anticompetitive. Because determining cost is not an issue, bill and keep also will be far easier for all parties to administer, particularly on an interim

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20/ Far from being an overly regulatory option, bill and keep is the least intrusive method available to the FCC to jumpstart competition. Litigating cost issues in administrative proceedings is staggeringly expensive, particularly for carriers without the deep pockets of the LECs. As described by Vanguard, the cost to one party to participate in one state proceeding equaled the cost of terminating 75 million minutes of traffic. Vanguard Comments at 14.

21/ Cox Comments at 5.

basis, than an interconnection regime that requires the measurement of traffic and assesses rates based on peak periods.[22/]

In addition, contrary to the arguments advanced by the LECs, bill and keep will promote efficient behavior by all parties. Because in the interim period interconnection rates will be set at a level that reflects the tiny level of the LECs' actual costs (as properly reduced by administrative, regulatory and CMRS network costs), all carriers will have an incentive to reduce costs and provide interconnection in the most efficient manner.[23/] Moreover, imposing bill and keep on an interim basis will give LECs an incentive to come forward with

22/ See, e.g., AirTouch Comments at 23-26 ("the need to determine peak rates and then implement a verifiable billing system for collecting these charges will eliminate the administrative simplicity of bill and keep, thus slowing the development of CMRS competition and triggering significant transaction costs for both policy makers and private parties"). Moreover, given the non-traffic sensitive nature of most LEC facilities costs, a flat rate pricing mechanism is far superior to usage-based charges from an economic efficiency perspective. As stated by Dr. Brock, as long as "it is necessary for the terminating carrier to make the capacity available, it incurs the costs for termination based on expected traffic for which it prepares, not based on actual traffic." Brock Reply at 5.

23/ APC Comments at 12 (describing inefficient interconnection arrangements between APC and Bell Atlantic); AT&T Comments at 10; CTIA Comments at 29-31. LEC fears that CMRS providers will not build facilities but will rely instead on "free" LEC facilities are completely exaggerated. Because bill and keep will only be imposed by the Commission on an interim basis, CMRS providers must make investment decisions based on the assumption that long run incremental cost-based charges will apply. Thus, it is highly unlikely that a CMRS provider would choose not to build necessary facilities unless such construction would be more expensive than purchasing use of the same facilities from the LEC.

more reasonable long-term compensation arrangements, rather than proposals that perpetuate their monopoly power.[24]

Accordingly, as demonstrated by the comments, continuation of the existing uneconomic interconnection arrangements between LECs and CMRS providers will ensure that CMRS is unable to mount effective competition to the LEC monopoly in the local telecommunication market. By contrast, mass marketed CMRS services that reach beyond the mobile services niche can be realized immediately if the Commission prescribes an interim bill and keep compensation arrangement for LEC-CMRS interconnection.

b. The LECs Have Demonstrated Their Continuing Market Power in Assessing Exorbitant CMRS Interconnection Rates.

LEC commenters argue that establishing an interim LEC-to-CMRS interconnection policy is unnecessary because CMRS providers have "experienced phenomenal growth."[25] According to these LECs, market conditions show that CMRS providers are able to negotiate interconnection arrangements without Commission intervention. The LECs even have their cellular affiliates attest to the reasonableness of current interconnection arrangements.[26] This

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24/ As stated in Dr. Brock's reply, "[u]sing bill and keep as the default arrangement until agreement is reached is more incentive compatible than using the current arrangements as the default until agreement is reached because it provides incentives for the LECs to develop their incremental cost data and other information needed to support a negotiated interconnection agreement." Brock Reply at 7.

25/ See, e.g., U S West Comments at 8; Ameritech Comments at 7; Bell Atlantic Comments at 9-11; BellSouth Comments at 22; GTE Comments at 16-19; NYNEX Comments at 13-15.

26/ See, e.g., SBC Comments at 17-18.

LEC portrayal of the CMRS marketplace, vis-a-vis landline local exchange service, is a smokescreen and provides a distorted picture of the CMRS marketplace.[27/]

The historical growth in the CMRS niche marketplace, however, is not the issue here. As the Commission has correctly identified in the Notice, the central problem with the current state of LEC-to-CMRS interconnection arrangements is that "LECs . . . unquestionably still possess substantial market power in the provision of local telecommunications services."[28/] As the Commission has acknowledged, it is a well-accepted economic principle that "a firm controlling bottleneck facilities has the ability to impede

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27/ As the Commission has acknowledged, sound economic principles dictate that the cellular industry cannot fairly be measured by the same standard as landline telephone industry because:

> [i]n analyzing profits in parts of the CMRS industry such as cellular, paging and SMRs, the appropriate standard is for a growth industry, rather than for a mature industry. There are at least three important differences between growth and mature industries. First, growth industries tend to have higher profits.[] Second, growth industries need cash from high profits to fund investment in additional plant and equipment.[] Third, the profits of growth industries typically follow a pattern in which firms incur start-up losses, followed by rising profitability, which is followed by declining profitability as entry by newcomers becomes relatively imminent, and a further decline when such entry finally occurs.

See First Report, Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, FCC 95-317 at ¶ 78 (released August 18, 1995) ("Annual Assessment of CMRS Competition") (footnotes omitted) (emphasis added).

28/ See Notice at ¶ 12.

access of its competitors to those facilities."[29/] According to one economic study, it will be at least five years before a majority of U.S. residents have an alternative to current LEC offerings. During the transition to competitive markets, LECs will control six regulatory "choke points" -- local number portability, network unbundling, network interconnection, local exchange service resale, reciprocal compensation for terminating traffic, and universal service support mechanism reform -- each of which has the real potential to forestall local exchange service competition.[30/] The study concludes what is obvious to everyone but the LECs -- that local competition is "effectively nonexistent when compared with interexchange competition."[31/]

The LECs provide no evidence to rebut the conclusion that they retain substantial market power to suppress the implementation of more pro-competitive interconnection by CMRS providers to LEC networks. PacBell unpersuasively relies on an allegedly "large and growing" supply of alternative local switching facilities to conclude that LEC market power is quickly "eroding."[32/] A study by the Commission's Industry Analysis Division, however,

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29/ See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 21 (1980) ("Competitive Carrier I").

30/ See Economic Strategy Institute ("ESI") study, Ensuring Competition in the Local Exchange summarized in Craig D. Dingwall, The Last Mile: A Race for Local Telecommunications Policy, 48 Fed. Com. L.J. 105, 111 nn.29-31 (1995) (citing Study Sees Ongoing Barriers to Local Competition, Telecom. Reps. July 17, 1995, at 14).

31/ See id.

32/ See PacBell Comments at 40-42.